

EXHIBIT

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From: Pearson, Ashley
Sent: Monday, June 09, 2014 3:46 PM
To: gkulik@kgslaw.com
Cc: Petrocelli, Daniel; Kline, Matthew; Schultz, Michelle (Michelle.Schultz@warnerbros.com); Pope, Zazi (Zazi.Pope@warnerbros.com)
Subject: Gerritsen v. Warner Bros. Entertainment Inc., et al.
Attachments: 6.9.14 letter.pdf

Mr. Kulik,

Please see the attached letter sent on behalf of Matt Kline.

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June 9, 2014

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Glen L. Kulik, Esq.
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Re: Gerritsen v. Warner Bros. Entm't et al., Case No. CV14-3305 MMM

Dear Mr. Kulik:

We know you have been engaged in discussions with our clients in the above matter, which we hope continues. Given the press of the schedule, however, and pursuant to Local Rule 7-3, we write to discuss with you the Rule 12 motion that defendants intend to file. To avoid defendants incurring the fees and costs necessary to litigate the motion (which we believe should be granted with prejudice), we ask that your client dismiss her case voluntarily—even if it is without prejudice in the interim—so that the parties can discuss the case further.

As our clients shared in earlier correspondence (enclosed herewith), your client's 1999 book *Gravity* and Warner Bros.' 2013 motion picture *Gravity* are so different that no reasonable person could conclude that the latter is based on the former. Indeed, the way your client framed her complaint acknowledges that no copyright infringement claim could ever be brought based on the movie, cf. e.g., *Benay v. Warner Bros. Entm't, Inc.*, 607 F.3d 620, 627-28 (9th Cir. 2010); *Funky Films Inc. v. Time Warner Entm't Co., L.P.*, 462 F.3d 1072, 1077-78 (9th Cir. 2006); *Gold Glove Productions v. Handfield*, C.D. Cal. Case No. 13-CV-7247, Docket No. 218 (Feb. 24, 2014), and instead, her case is premised solely on contract theories.

But these contract claims are without basis—and in ways that a court may resolve at the Rule 12 stage. Neither Katja nor New Line could have breached their 1999 contracts with your client, as neither “produce[d]” or “release[d]” the motion picture *Gravity*. Compl. Ex. 1 ¶ 2B. And the actual producer of the movie—Warner Bros.—is a party to neither 1999 agreement.

To avoid this lack of privity, your client suggests that Warner Bros. was assigned these 1999 contracts in 2008. See Compl. ¶ 20. This “information and belief” allegation, *id.*, is incorrect, however—as the operative contract to which the complaint adverts (and the Court may

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notice on a Rule 12 motion, *see Neilson v. Union Bank of Cal., N.A.*, 290 F. Supp. 2d 1101, 1114 (C.D. Cal. 2003)), shows. The 2010 assignment agreement (which our clients previously sent you) provides that New Line (and, by extension, Katja) retains all IP rights and contracts it acquired *prior to 2010*, including the 1999 contracts with your client. Warner Bros. did not assume any rights or obligations under your clients' 1999 agreements.

Your client also alleges that New Line and Katja are the alter-egos or agents of Warner Bros., *see* Compl. ¶¶ 6, 16, but these conclusory allegations fail the *Iqbal* test and governing law, which presume the separate status of corporations and their subsidiaries. *See, e.g., Ashcroft v. Iqbal*, 556 U.S. 662, 678-681 (2009); *Doe v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 683 (9th Cir. 2009); *Neilson*, 290 F. Supp. 2d at 1112; *Sandoval v. Ali*, 2014 U.S. Dist. LEXIS 42630, at *16-18 (N.D. Cal. Mar. 28, 2014); *Biggins v. Wells Fargo & Co.*, 266 F.R.D. 399, 414 (N.D. Cal. 2009).

There are other independent reasons that your client's contract claims should be dismissed; among them, the 2013 movie *Gravity* is not "based on" your client's book. This "based on" phrase is a "term of art" that is "commonly used" in entertainment agreements, and may only be breached if the challenged film is "substantially similar" to the underlying work in terms of plot, motivation, subject matter, milieu, and characterization. D. Nimmer, Nimmer on Copyright § 19D.08[B] (2013) (citing *Fink v. Goodson-Todman Enters., Ltd.*, 9 Cal. App. 3d 996, 1007 (1970)). The few abstract comparisons that your client alleges, *see* Compl. ¶¶ 11, 12, 19, fail to show substantial similarity, as a matter of law. *See, e.g., Sutton v. Walt Disney Prods.*, 118 Cal. App. 2d 598, 603 (1953); *Benay*, 607 F.3d at 630-32; *Kightlinger v. White*, 2009 Cal. Unpub. LEXIS 9345, at *8-*26 (Nov. 23, 2009). Separately and independently, we do not believe you have pled the requisite "access" in a cognizable way, and we wish to discuss that dispositive issue as well.

In closing, we look forward to meeting with you to discuss the case and these issues. Our letter outlines only a few of the defenses we would assert in the case. Our clients reserve all rights and remedies, including to add to the list above as our discussions unfold, and to recover their fees and costs. We thank you for your time and attention.

Very truly yours,

/s/ Matthew T. Kline

Matthew T. Kline
of O'MELVENY & MYERS LLP

Enclosure

cc: Daniel M. Petrocelli, Esq.

OMM_US:72334696



WARNER BROS.
ENTERTAINMENT INC.

Michelle Schultz
Vice President and
Senior Litigation Counsel

April 25, 2014

Via Overnight Delivery

Christine S. Cuddy
Kleinberg Lange Cuddy & Carlo LLP
11111 Santa Monica Blvd.
Suite 1750
Los Angeles, CA 90025

Re: Gravity

Dear Ms. Cuddy:

I am writing in response to your March 6, 2014 letter to Jeremy Williams in which you claim that Warner Bros. Pictures' movie *Gravity* (the "Picture") is based on or otherwise infringes your client Tess Gerritsen's book *Gravity* (the "Book"). Your letter demands that Warner Bros. immediately acknowledge "that the Picture is based on the [Book]" and accept responsibility for unspecified "extraordinary" damages in addition to amounts allegedly due under a March 18, 1999 Purchase Agreement ("Purchase Agreement") between Ms. Gerritsen and Katja Motion Pictures Corp. ("Katja").

We thank you for your courtesy in informing us of your client's claim and also for your patience, however, after looking into this matter, we believe it lacks legal and factual merit for numerous reasons as set forth below.

First, as a factual matter the Picture is not based on the Book. Beyond this being readily apparent upon reading the Book and watching the Picture, factually the Katja project based on the Book ("Book Project") and the Universal/Warner Bros. project that produced the Picture ("Picture Project") are separate and unrelated projects. The Book Project was developed by and is still owned by Katja.¹ The Picture was developed independently by Universal and later optioned by Warner Bros. with no reference to or

¹ Katja purchased and now owns, among other things, all motion picture rights to the Book, for which it paid your client \$1,000,000. See March 18, 1999 Gravity Purchase Agreement. Therefore to the extent your claim is based on a copyright infringement theory, your client lacks standing as Katja owns all relevant rights.

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EXHIBIT F

basis in the Book Project, the Book, or any other source materials. Thus, your client's assumption that the Book Project and the Picture Project are one and the same is false.

You claim that there's "at least one individual" who worked on both the Book Project and the Picture Project, namely Donna Langely, and from this sole link presumably arises your erroneous theory that the Book Project is the same as the Picture Project. Even assuming that such a link would be legally significant (which it would not), we have found no facts that support its existence. Specifically, Ms. Langely has no recollection of ever discussing the Book with Mr. Cuaron or any of his representatives. Consistent with this, Mr. Cuaron's representatives have confirmed to us that no one, including Ms. Langely or anyone from Katja, ever discussed the Book with Mr. Cuaron, and that he has no recollection of ever hearing of or reading the Book. Further, it was Mr. Cuaron who came to Universal with the idea for the Picture, not the other way around. Specifically, Mr. Cuaron and his son Jonas Cuaron originally came up with the concept for the Picture with the conceit of space acting as a metaphor for life. Thus, the idea for the Picture originated with Mr. Cuaron, not with Ms. Langely, the sole "individual" whom you claim links the two projects.

You further claim that "a reliable" source advised you that Mr. Cuaron was attached to the Book Project. We can find no evidence of this in Katja's files. Specifically, we found no contract attaching Mr. Cuaron to the project, whether in final or draft form, no communication with Mr. Cuaron or his representatives suggesting such an attachment, and in fact no mention of Mr. Cuaron at all. Surely if Mr. Cuaron was "attached" as you claim, some contractual evidence of it would appear in Katja's files, yet there is none. Further, Mr. Cuaron and his representatives categorically deny he was ever attached and Ms. Langely has no recollection of any such arrangement. Thus, we can find no factual support for your claim that the Picture is "based on" the Book.

Second, you claim that "the Picture infringes on the copyright of the [Book]" or is otherwise "based on" the Book because of alleged similarities in content. We disagree. The Picture and Book (together, the "Works") differ in every material and legally relevant respect, including characters, plot, tone, and sequence of events. While you are undoubtedly familiar with both the Book and Picture, a synopsis of each is useful here.

The Book:

"Gravity: A Novel of Medical Suspense" opens in the Galapagos rift where Dr. Stephen D. Ahearn is in a submarine headed into a deep underwater canyon as part of an unexplained exploratory mission. He is being guided by SeaScape's Dr. Helen Koenig when he is accidentally trapped by debris and dies.

The story fast forwards two years to medical doctors Emma Watson and her husband Jack McCallum, who are on the verge of divorce. Watson is an experienced, "fearless" astronaut who is preparing for her second space shuttle mission. McCallum was part of the NASA astronaut corps and was assigned to a shuttle mission until kidney stones disqualified him. The ensuing marital strain prompted McCallum to file for divorce.

Watson arrives at the International Space Station (ISS) to replace astronaut Dr. William Haning, whose wife died after McCallum unsuccessfully tried to treat her after a car accident. Other astronauts on the ISS include ISS commander Michael Griggs (married, having an affair with Estes), Diana Estes (English, cold and beautiful), Nicolai Rudenko (Russian), Kenichi Hirai (Japanese, quiet and shy), and Bill Haning (African-American, affable and popular). On Earth, key NASA personnel include Gordon Obie (director of flight crew operations), Ken Blakenship (in charge of day-to-day operations at the Johnson Space Center, the public face of NASA), Randy Carpenter (shuttle flight director), Dr. Todd Cutler (flight surgeon at ISS Mission Control), and Gretchen Liu (NASA's public affairs officer).

As part of Watson's duties on the ISS, she oversees an experiment involving archaeons (single-celled organisms collected deep under water from the Galapagos rift by Koenig). On the ISS, the archaeons begin to multiply rapidly into multi-celled organisms. Koenig had previously instructed Haning to destroy the archaeons, which he failed to do before returning to Earth.

Japanese astronaut Hirai discovers a colony of mice dying off. An infected rodent bites him and another rodent corpse explodes infecting Hirai, who falls mysteriously ill with demoniac red eyes, seizures, and vomiting. Watson, as the medical doctor on board the ISS, works with NASA surgeon Cutler at mission control to try and save Hirai while NASA arranges to launch the shuttle Discovery to take Hirai home. The other option is for the entire ISS crew to take the emergency evaluation vehicle CRV back to Earth, but it would mean abandoning the space station, which the ISS crew decides not to do.

Meanwhile, Koenig is vacationing in Mexico when she sees TV news coverage about the evacuation shuttle being launched and she realizes that the illness on the ISS is related to her archaeon experiment. She tries to get back to the U.S. to help but dies in a car accident on the way to the airport. Around the same time, McCallum heads to NASA to take turns with Dr. Cutler as the NASA surgeon assisting Watson from ground control.

Still sick, Hirai disappears in ISS, is found convulsing, attacks Watson, and dies. The space shuttle Discovery and its crew including Commander Kittredge, Medical Officer O'Leary, Jill Hewitt and Andy Mercer arrive to take Hirai's body back to Earth, moving the body from ISS to Discovery. While Discovery is still attached to but sealed off from the ISS, the Discovery crew wakes to find green gray globes that came from Hirai's body floating everywhere contaminating the entire crew. Discovery tries to undock but Hirai's body explodes causing the shuttle to collide and seriously damage ISS. The lone coherent Discovery crew member Hewitt tries to pilot the shuttle to Earth but goes blind at the last minute causing Discovery to crash land in White Sands, New Mexico killing the remaining crew.

McCallum and a medical crew are at White Sands to meet Discovery but the U.S. military prevents them from boarding the crashed shuttle. The military takes control of the scene without explanation, treating it like a biohazard site and refusing to cooperate

with NASA. NASA, however, insists that McCallum assist the military doctor Dr. Isaac Roman with the autopsies of the Discovery crew. During the autopsies, green grey globs are found in the bodies of the crew. The autopsies show that the archaeons have incorporated lab mouse, frog and human DNA to form a new mutation called a “chimera.” The military refuses to share most of its data and information with NASA and takes over NASA operations. Dr. Roman, Jared Proffit, and the U.S. President feature as the decision makers on the military/government side.

Meanwhile, back at the damaged ISS, instead of taking the CRV escape vehicle back to Earth, the remaining astronauts decide to seal off the damaged portions of the space station so as to not have to abandon it. Rudenko and Haning go on a spacewalk to repair ISS during which Rudenko is infected by the chimera. The ISS crew then decides to take the CRV back to Earth, however, to avoid contaminating Earth, the military and the U.S. president decide to abandon the ISS and its surviving crew in space and call off the CRV launch. Rudenko dies on the ISS. Then Estes becomes infected and dies after infecting Griggs, who loves Estes and kills himself while Haning and Watson are on a spacewalk trying to repair the ISS. After Watson finds Griggs and Estes dead and blood and infectious globs everywhere, she becomes infected, sends uninfected Haning home via the CRV, and is resigned to dying up in the ISS. But the Air Force shoots down and kills Haning in the CRV to avoid any risk of contaminating Earth.

Back on Earth, McCallum and Obie continue to investigate what the chimera is, where it came from, and how to defeat it. They visit Koenig’s lab at SeaScape that has been seized by the U.S. military, and eventually link the underwater death of Ahearn from the beginning of the Book to the chimera. Ahearn was an expert in asteroids, which leads McCallum and Obie to realize that the chimera is not a product of bioterrorism or a harmless experiment gone wrong, but rather it is an alien life form that was sent to the ISS as an experiment headed by Dr. Roman and funded by the U.S. military. McCallum also believes that Koenig added frog DNA to create a “kill switch” to the chimera just in case the experiment went awry, which belief leads McCallum to isolate a virus that may be lethal to the amphibian-based chimera. He believes the virus could be an antidote.

Sullivan Obie, the screw-up brother of NASA’s director of flight operations Gordon Obie, has created a prototype of a private, commercial space shuttle called the *Apogee II*. McCallum and Gordon Obie team up with Sullivan Obie to enable McCallum to secretly take the *Apogee II* on a one-way trip to rendezvous with Watson now alone in the ISS, where he is prepared to risk being infected and dying with her. Proffit figures out McCallum is on the *Apogee II*, but decides to let McCallum try to save his wife.

The *Apogee II* rendezvous with ISS and McCallum spacewalks to the ISS. McCallum finds Watson to be the lone survivor, convulsing and dying. He injects her with the amphibian virus and surgically removes chimera eggs from her brain. Months later, after quarantining in space and returning to Earth, Watson is free of infestation and has reconciled with McCallum, but dreads that an alien intelligence may have sent the chimeras to colonize Earth.

The Book is evenly split between Earth and the ISS, and Watson and McCallum share equal billing as protagonists amid an impressively long cast of characters. The twisting plot is part medical drama/mystery (think *ER* in space), part conspiracy theory (a secret government experiment gone horribly awry followed by a military cover up), part romance (will McCallum save Watson? Will they get back together?), and part science fiction space adventure (think *Alien*).

The Movie:

"Gravity" the Picture opens in space with astronauts Matt Kowalski (George Clooney), Shariff Dasari (Indian engineer), and Ryan Stone (Sandra Bullock) on a space walk from the space shuttle Explorer to the Hubble telescope to carry out a repair mission and to install additional equipment. Stone is connected to a robotic arm attached to the shuttle, while Kowalski is wearing a Manned Maneuvering Unit ("MMU") so that he can freely float around. Stone is installing a new system into Hubble that will act as a "new set of eyes to scan the universe," but it's not functioning properly and Stone needs an hour to fix it. Stone, the only newbie among the three, is a medical engineer, specialized in hospital scanning systems with very little astronaut training and who is visibly uncomfortable in space. She mumbles to herself as she works and is a loner by nature. Kowalski is a talkative flirt and a highly experienced astronaut on his final mission.

Suddenly, Mission Control Houston orders the astronauts to abort the mission and to return to the shuttle. A Russian missile has shot down a Russian satellite, and the impact has created an unintended cloud of orbiting debris that hits other satellites in a deadly chain reaction that is headed their way. As the three astronauts scramble to get back to the space shuttle, orbiting debris explodes around them, contact with Houston is lost, and a piece of shrapnel hits Shariff killing him. Debris hits Explorer and it rolls with Stone attached to its robotic arm, which then detaches spinning away from Explorer. Under instructions from Kowalski, Stone detaches from the spinning arm, rotating end over end in an endless free fall. Stone panics, low on oxygen, and out of communication with Explorer.

Kowalski finally makes contact with Stone and comes to get her using his MMU to maneuver. He tethers the two of them together and heads back to Explorer. The two set their watches for 90 minutes, when the debris will return. They head back to Explorer to find it catastrophically damaged with everyone on board dead. Stone and Kowalski make their way to the ISS using Kowalski's MMU, with Kowalski running out of fuel and Stone running out of oxygen. They intend to use the ISS's Soyuz escape pod to return to Earth. On the way to ISS, Stone reveals that her daughter Sarah died at age four.

The pair arrive at ISS, which has been evacuated and abandoned. They come into the ISS hard, bouncing off of it, becoming untethered, and trying desperately to grab a hold of something. Stone manages to get her foot tangled in a rope and tries to hold onto Kowalski, but he realizes he's dragging her with him so he let's go and drifts off into space to die. While drifting away, he talks her through getting into the ISS, and tells her

to take the second Soyuz, which is damaged, but can still be used to get to the Chinese space station Tiangong. From there, Stone can take the Tiangong's escape pod back to Earth. Stone, out of oxygen, struggles to get aboard the ISS while Kowalski drifts out of range and is lost forever. Thirty-six minutes into the film, Stone is the sole character left. She is utterly alone.

Once in ISS, Stone floats through the deserted ISS, knocking against a wall causing sparks, in search of its communication system. She tries in vain to hail Kowalski. The ISS then catches on fire and Stone rushes to the Soyuz escape pod. She tries to launch the escape pod but the Soyuz's deployed parachute attaches it to the ISS, boomeranging Stone back into the ISS. Stone goes on a spacewalk to detach the parachute to free the Soyuz. While on the space walk, the satellite debris returns and, right after Stone detaches the Soyuz, destroys the ISS.

Stone, now in the Soyuz, lines it up with the Chinese space station but the thrusters won't ignite. There's no fuel. After hours of mayday calls and continuous attempts to reach anyone by radio, Stone ironically connects with an Inuit fisherman in Greenland with barking dogs in the background. The two cannot understand each other, though they briefly connect by making barking noises. She begins to cry as she realizes that she's going to die, and that no one will mourn or pray for her back on Earth. A single tear beads in the air. She hears a baby cry and the fisherman begins to sing a lullaby in Greenlandic. Stone remembers Sarah and says she hopes to see her soon. She purposefully drops the oxygen down, resigned to die. Suddenly, Kowalski descends through the porthole and motivates her to let go of her grief over her daughter Sarah and him, and to live and go home. Kowalski's return was a dream. Stone wakes up alone and sets course for home with new determination.

Using a soft landing engine to thrust her spacecraft towards the Chinese station, Stone ejects from the Soyuz using a fire extinguisher to propel herself to the Tiangong, which she reaches as it heads for the Earth's atmosphere. She rushes through the abandoned and disintegrating station and takes refuge in the Shenzhou escape pod, which crashing debris forces her to immediately activate for flight. Soon, Stone's speeding pod enters Earth's atmosphere. As she lands, she nearly suffocates from cabin smoke and nearly drowns when the pod lands and sinks in a lake. She frees herself and rises from the primordial stew-like waters to the surface, and takes her first shaky steps on land.

The Picture is an intimate psychological portrait of a single character struggling to overcome adversity in the form of multiple mechanical disasters along with her own internal limitations in order to come to terms with life, death and her own humanity. All but four minutes of the film are spent in the isolation of space. There is no cast of characters from Houston telling Stone what to do or visibly working to bring her home. Stone's isolation, which at first she desires and later fears, is central to the Picture. It is the condition that forces Stone to face and ultimately overcome adversity to be reborn in the last scene. A new beginning for the once mentally and physically isolated Stone, her courageous second step into life after her first one faltered.

As is plain from the above, the differences between the Works extend far beyond the “spectacular visual effects” that you cite; the plot, sequence of events, tone, characters, and overall theme of the Book and the Picture differ in almost every conceivable way. The tone of the Picture is introspective, shifting from subjective to objective points of view throughout, and is as much a psychological story as an action movie. The dialog is sparse, mainly consisting of Kowalski’s light banter interspersed with wisdom, and Stone’s self-talk, mumbling and personal. The Book, in contrast, is filled with conspiracies, cover-ups, medical drama and romance. The dialog is fast paced and moves the story along and is generally between characters.

Likewise, the “similarities” you claim exist between the two Works are generic, superficial, or just plain wrong. Specifically, you claim that the Picture is “based” on the Book because both Works “concern a female physician astronaut who find herself in orbital space (including the ISS), [and] by a series of disasters is left alone” and “struggles to find a way to return to Earth.” None of these similarities withstand scrutiny.

First, you are incorrect that the two stories are about “a female physician astronaut.” Watson is clearly a medical doctor, but Stone is not. She is an engineer whose mission is to install equipment on Hubble to serve as its “new eyes” in space. Other differences abound. Watson is described as “fearless”, “quick and lithe,” and possessing “sparkle” with a “fire of curiosity in her eyes.” She’s an experienced astronaut on her second mission, athletic and self-assured, married, with no children. In contrast, Stone is a loner content with her basement lab, introverted, a mumblor, short on training and on her first mission. She is clearly physically uncomfortable and unsure of herself in space, is single, and is still grieving over the death of her young daughter. The only similarity between Stone and Watson are that they are both female astronauts, which is clearly neither an actionable similarity, nor without precedence. *See, e.g., Wikipedia* listing 57 female astronauts who have traveled into space; *First Men in the Moon* (1964); *Alien* (1970); *Saturn 3* (1980); *2010* (1984); *Solaris* (2002); *Prometheus* (2012). Indeed, if featuring a female astronaut were sufficient to prove that one work is “based on” another, the Book could rightly be accused of being “based on” any number of prior works.

Similarly, the other cast of characters in the Works differ dramatically. The Book features McCallum, a medical doctor married to Watson but jealous of her success who comes to realize he really loves her; Gordon Obie, head of NASA flight operations known as the sphinx who is remote yet caring; Gordon’s screw up brother Sullivan Obie, a drinker and a womanizer who drives a motorcycle and manages to piece together a stripped down shuttle; ISS commander Michael Griggs, married but has an affair in space and eventually commits suicide; Diana Estes, a cold English astronaut beauty who loves Griggs; Kenichi Hirai, a shy loaner whose poor mastery of English alienates him from the rest of the ISS crew; Bill Haning, a gregarious African-American astronaut who was wrongly accused of making an error on an earlier mission; Ken Blakenship, the public face of NASA who is a sycophant and allied with the government; Dr. Todd Cutler, a sympathetic flight surgeon; Grechen Liu, NASA’s elegant public affairs director; Dr. Helen Koenig, an archaeon researcher with a conscience; Dr. Isaac Roman, a ruthless

military doctor whose experiment goes awry; Jared Proffit, government man calling the shots who is finally sympathetic to McCallum; the U.S. President, fitfully making decisions under great duress; Commander Kittredge, experienced astronaut looking for camaraderie; Jill Hewitt, brave female astronaut and pilot who perishes trying to land Discovery; and, the real enemy, an alien chimera infecting and killing the characters.

This is only a sampling of the myriad of characters in the Book, none of which have an equivalent in the Picture. There are no NASA or government officials, no lovers, no husbands, no multi-national crew, no scheming doctors or scientists, no political figures, and no aliens in the Picture. Besides Stone, there is only Kowalski, the chatty, flirtatious and highly experienced astronaut who drifts off into space and dies, and, for a scant few minutes, Dasari, an Indian engineer who is killed by debris. This barebones cast differs from the numerous characters in the book, by name, backgrounds, demeanor, dialog, action, etc. In short, not a single character in the Picture resembles a character in the Book.

Second, you complain that both Works take place in “orbital space.” Putting aside the fact that space is a common setting for books as well as movies, the Book actually takes place half in space and half on Earth. Watson doesn’t even reach the ISS until page 90. In contrast all but the last four minutes of the Picture take place in space. And the “space” is different, with almost all of the Book taking place in space shuttles or the ISS, while the Picture takes place in open space, with a brief stop at ISS (totaling a mere eight minutes) and aboard non-functioning or outdated, claustrophobic escape pods.

Third, the so-called series of disasters that leave the main character alone in space are markedly different. In the Book the disaster is infection of the crew by an alien life form introduced to the space station by the U.S. military as an experiment. The “disasters” that ends in Watson being alone are the deaths by chimera or suicide of the ISS crew, and for nearly the entire Book Watson is in constant contact with Houston. In fact, she decides to cut off contact with Houston by taking off her headset on page 355, and she is rescued by McCallum on page 363, and we aren’t privy to her isolation during the interim eight pages, which focus instead on McCallum and Proffit back on Earth. In contrast, the “disasters” in the Picture are mechanical, manmade, or born out of Stone’s inexperience, such as the cloud of debris that takes out Explorer, the mechanical fire on ISS, and the parachute snag with the Soyuz. Disease, suicide, conspiracy, and aliens are not part of the equation. Gripping and complete isolation and adversity are, with Stone’s isolation lasting not for an unseen eight pages, but for a majority of the film.

Fourth, in an obvious effort to make the Book sound more like the Picture, you claim that the main story in the Book is Watson’s “struggle to find a way back to Earth.” This is false. Watson has multiple opportunities to return to earth throughout the Book but consciously decides to stay at ISS. For example, when Hirai becomes ill, it is Watson who decides that the ISS crew will not evacuate by the CRV escape pod, but rather will wait for a shuttle rescue so as to not to shut down ISS; when Discovery arrives, Watson doesn’t return with the crew; when the ISS is damaged by Discovery, Watson turns back from getting into the CRV to help Griggs try to save ISS; and finally Watson sends

Hanging back in the CRV but decides to stay behind because she's infected. The Book's "main story" is not Watson trying to get home, but rather a whole group of characters trying to identify, treat, and eventually eradicate what turns out to be an alien life form. The action in the Picture is, on the other hand, entirely devoted to Stone trying to overcome one obstacle after another to return to Earth. Every action, every decision is made towards that end; Stone is never given the option to return to Earth just to refuse (which Watson does no less than four times). Returning to Earth is Stone's sole focus and aim.

Fifth, it is not at all surprising that two stories that take place in space include the ISS. There aren't exactly a lot of options for locations in space. The ISS, a real location in space that is "permanent" and known by audiences is an obvious one, and its use in film is nothing new. *Love* (2011); *Mission to Mars* (2000); *The Day After Tomorrow* (2004). Importantly, the ISS is used very differently in the two Works. In the Book, half the story takes place in the ISS, which is a working, multi-national station crowded with action and people and in constant contact with Earth. In the Picture, the ISS is merely a momentary refuge for Stone, the interior featured for a mere eight minutes, vacant and abandoned and disconnected from all human contact.

Thus, none of the "similarities" that you cite come close to proving that the Picture is "based on" the Book. The Picture – with its entirely unique cast of characters, wildly differing plot and message -- is no more "based on" the Book than the Book is based on *ER* or the *Alien* franchise, iconic works that contain elements found in the Book such as strong female astronaut protagonists that are the sole survivors of a space crew, or aggressive female doctors racing against the clock and long odds to save patients.²

Finally, you assert that it "strains credulity" that Warner Bros. independently selected the title "Gravity" for its Picture. Given the double meaning of the word "gravity" – meaning both the seriousness or significance of a situation and the force that attracts a body towards the Earth – we find it both natural and fitting that the Picture is called *Gravity*. This single word perfectly captures both the physical and psychological elements of the film. Nor is it a unique title. "Gravity" is and has been the title of numerous artistic works including video games and songs. See, e.g. *Gravity* (Nintendo game 2009); *Gravity* (song written and performed by J. Mayer 2007); *Gravity* (song written and performed by S. Bareilles 2007); *Gravity* (song performed by J. Turner 2006); *Gravity* (song by C. Midnight and D. Harman 1986 on *Gravity* album); *Gravity* (song performed by A. Escoveda on CD *Gravity* 2002). Indeed, your client's book is not

² The *Alien* franchise in particular resembles the Book much more closely than the Picture. For example, both include strong female astronaut protagonist who are the sole survivor of space crews whose bodies are infiltrated by alien life forms and who decide to sacrifice themselves to prevent further spread of the aliens. Both feature aliens that use human hosts to procreate, incorporate human DNA, and eventually kill and explode their human hosts. Finally, Military scientists in each are responsible for cultivating and ultimately unleashing the aliens in experiments gone awry. These similarities are more striking than simply the use of a female astronaut stuck in space, which, incidentally, is also true of *Alien*. Indeed, by the standard you wish to apply, your client's Book would clearly be "based on" the *Alien* franchise.

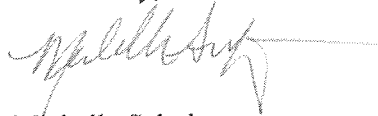
the only book entitled “Gravity” (e.g., *Gravity* (J. Chin 2014); *Gravity* (J. Whiting 2013); *Gravity* (M. Mullins 2012); *Gravity* (P. Manning 2010); *Gravity* (M. Davis 2009); *Gravity* (L. Hill 2009); *Gravity* (J. Frisch-Schmoll 2008); *Gravity* (B. Morgan 2003)), and the Picture is far from the only audiovisual work entitled “Gravity” (e.g., *Gravity* (ARETE 2009); *Gravity* (directed by Peter J. Eaton 2004); *Gravity* (Starz television series 2010); *Gravity* (DVD series by Cerebellum 2009); *Gravity* (short by Encyclopedia Britannica 1960). Thus, it is not particularly unique or shocking – and it is certainly not actionable – that the Picture is titled “Gravity.” See *Columbia Pictures Corp. v. Nat’l Broadcasting Co.*, 137 F. Supp. 348, 353 (1955) (title ordinarily not protectable).

In conclusion, a review of the Book and Picture clearly shows that the stories and characters are so different that there is no natural sense in which the Picture could be considered based on the Book, whether under copyright, contract or otherwise. This is particularly true where, as here, there is no question that Mr. Cuarón and his son independently created the Picture without reading, let alone relying upon, the Book. *Harry Potter and the Chamber of Secrets* and *Life of Pi* are “based on” the books of the same names. *Jurassic Park* the movie is “based on” Michael Crichton’s bestselling work. With these films, moviegoers expecting to see a film “based on” their favorite novels, while maybe having some quibbles with the adaptations, would not have felt misled. In contrast, in this case if following your demands Warner Bros. had falsely advertised that the Picture was “based on” Ms. Gerritsen’s book, fans whom went to see the film expecting to see Ms. Gerritsen’s book come to life would have left the theater baffled and feeling completely misled by the credit. One bears no resemblance to the other.

For all the foregoing reasons, Warner Bros. respectfully rejects your claim that the Picture is based on the Book or otherwise infringes your client’s rights. As I’m sure you can understand, the foregoing is not intended as a complete statement of the facts or law pertaining to this matter, nor a waiver of any of Warner Bros’ remedies, positions and defenses, all of which we expressly reserve.

I hope this letter satisfies your inquiry.

Sincerely,



Michelle Schultz

cc: Jeremy Williams
Zazi Pope